

WORKFORCE INVESTMENT ACT DISLOCATED WORKER CONTINGENCY FUNDS
CONTRACT BETWEEN THE CITY OF DURHAM AND EDUCATIONAL DATA
SYSTEMS INCORPORATED

This contract is made, dated and entered into as of _____ day of _____ 2014, between the City of Durham, a municipal corporation (“City”) and Educational Data Systems Incorporated (“Contractor”), a for-profit corporation organized and existing under the laws of the state of Michigan.

Section. 1. Background and Purpose. The City, through the Greater Durham Workforce Development Board, is a recipient of grant funds provided through the North Carolina Department of Commerce, Division of Workforce Solutions (DWS), for formula Workforce Investment Act purposes. Pursuant to said grant, in keeping with its broad objectives the City desires to engage the Contractor to render certain services in the furtherance of those objectives.

The Contractor shall abide by each paragraph of this agreement and its attachments and all procedures, rules and regulations imposed upon the City and by the DWS, in connection with the City’s receiving the grant referred to above. The specific service to be provided by the Contractor is employment and training services to adults and dislocated (“laid-off”) individuals that are enrolled in the program administered by the Office of Economic and Workforce Development (OEWD).

Section. 2. Services and Services to be Performed. Contractor shall perform the services and activities outlined in Attachment A, “Scope of Work.” Those services and activities are also referred to in this contract as the “program” or the “Work.” The Contractor shall begin performance of those services and activities on or about January 21, 2014. It shall complete those services and activities by June 30, 2014.

Section. 3. Complete Work with Extra Cost. Except to the extent otherwise specifically stated in this contract and in Attachment B the Contractor shall obtain, provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the work. Section. 4. Payment under the Contract. The City shall make payment on a cost reimbursement basis to the Contractor for services and activities described in Attachment A, within the budgeted line-items provided for in Attachment B, “Program Budget” in the amount not to exceed \$200,000, which is attached hereto and incorporated herein for a total contract amount and payments not to exceed \$200,000. Those payments shall be made by the City within 30 days of receipt of invoices for services received from the Contractor. No less often than monthly, the Contractor shall send invoices to the Workforce Development Administrator within the Office of Economic and Workforce Development, whose name and address shall be provided by the City. The City shall provide the Contractor with blank reporting forms referred to in this Contract, and Contractor agrees to use those forms and instructions.

Notwithstanding anything in the Contract, which may be to the contrary, Contractor understands and agrees that any payment made under or in any way relating to this contract by the City is limited to the lesser of (i) funds made available for that purpose by the North Carolina Department of Commerce, Division of Workforce Solutions (DWS) under the grant referred to above, or a total maximum of the total contract amount of (ii) \$200,000. Payments shall be made on a cost reimbursement basis by the City only for services and activities listed in Attachment A of this Original Contract, and consistent with, and not exceeding, the budgeted line item amounts identified in Attachment B of this Original contract. Contractor performance will be reviewed on a monthly basis. Failure to reach the goals and objectives, and failure to carry out the services and activities as set out in Attachment A, and Attachment B of this original contract in a timely manner, will result in delay of payment to Contractor and will be in breach of the contract.

Monthly invoice documentation shall include the following:

1. Time sheets or payroll registers.
2. Documentation related to the fringe benefit percentages for each employee whose salary is charged to the contract.
3. Documentation related to the cost or rental of space.
4. Documentation to substantiate travel costs that are invoiced and should be congruent with the policies of the City of Durham travel reimbursement.
5. Documentation of supply costs.
6. Documentation of other program costs such as advertising, technology, food and meeting costs, professional services, employee morale, insurance, criminal background checks, maintenance and repair and other costs allowable under the Office of Management and Budget and the policies of the Durham Workforce Development Board.
7. Documentation of client support service costs such as childcare, books, supplies, and other costs allowable under the Office of Management and Budget and policies of the Durham Workforce Development Board.

Section. 5. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes sub-consultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the ("Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold

from progress or final payments to the Contractor the sums estimated by the Project Manager to be

(i) the amount of interest due to the Subcontractor under subsection (a), and/or

(ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor. This subsection (b) does not limit any other rights to withhold payments that the City may have. (c) Nothing in this section (titled “Prompt Payment to Subcontractors”) shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Section. 6. Insurance. Contractor shall maintain insurance not less than shown in Attachment E

Section. 7. Attachments. The following attachments are made a part of this contract:

Attachment A	Scope of Work
Attachment B	Program Budget
Attachment C	Certification Regarding Lobbying
Attachment D	Drug Free Workplace
Attachment E	Financial Assurances

In case of conflict between an attachment and the text of this contract excluding the attachment, the text of this contract shall control.

Section. 8. Termination of Contract.

A. **For Cause.** If, through any cause, the Contractor shall fail to fulfill in a timely

and proper manner its obligation under this Contract; or if the Contractor shall violate any of the covenants, agreements or stipulations of this Contract; or if the grant under which this agreement is made is terminated, reduced, impounded, suspended or withheld; then the City shall thereupon have the right to terminate or suspend this Contract. Termination or suspension shall be accomplished by the City's giving written notice to the Contractor at least ten (10) days prior to the date that the contract is to be terminated. In the event DWS reduces the amount of its grant or for any other reason funding must decrease during the course of the contract term, the parties hereto must amend this Contract so that it will accommodate and reflect the action taken by DWS and/or other grantors/governing bodies.

B. For Convenience. This Contract may be terminated by the City without cause and independently from any action pertaining to the federal grant under which this Contract has been funded, at the convenience and the sole discretion of the City. The City shall provide the Contractor with at least thirty (30) days written notice prior to the effective date of termination under this paragraph. In the event of termination for convenience, the City shall make payment for the service performed and authorized expenditures incurred, if any, prior to the termination date, by the Contractor in accordance with the Contract.

C. Consequences of Termination. Notwithstanding termination, whether or not premature, all obligations that are still executory on both sides are discharged but any right based on prior breach or performance survives. Where a provision of this Contract states a specific requirement to be done before or after termination, (e.g., *see* the third paragraph of the Section titled Property Management), such a specific requirement shall be followed. Without limiting the preceding two sentences, it is agreed that in the event of termination, whether or not premature,

(1) all property and finished or unfinished documents, data, studies, and reports purchased or prepared by the Contractor under this Contract shall become the property of the City and shall be delivered to the City within thirty (30) days after the completion of the certified audit of this Contract; and

(2) the following shall survive termination:

(a) all of the Contractor's obligations to report to the City with respect to matters occurring before the termination;

(b) all of the Contractor's obligations to create, maintain, submit, and allow access to records;

(c) applicable provisions of the Section titled "Applicable Federal, State and City Requirements; Conflict of Interest; Political Activity"; and "Indemnification."

Section. 9. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Mr. Jason Wimmer, Adult Employment Program Coordinator

City of Durham

Office of Economic and Workforce Development

302 East Pettigrew Street, Suite 190

Durham, North Carolina 27701

The fax number is (919) 560-4986

To the Contractor:

Kevin Schnieders, CEO

Educational Data Systems, Inc.

15300 Commerce Drive North,

Suite 200

Dearbourn, MI 48120

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Section. 10. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless indemnities from and against all charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend indemnities with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below

-- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnities" means City and its officers, officials, independent Contractors, agents, and employees, excluding the Contractor (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnities against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of indemnities.

Section. 11. Identification of Documents. All reports, and other documents completed as a product of this Contract, other than documents used in the administration of the Contract such as reports to the City, shall have placed thereon by the Contractor the following statement: The preparation of this document was financed in part or in whole through funds from the City of Durham Office of Economic and Workforce Development and NC Department of Commerce.

Section. 12. Financial Records. The Contractor shall establish and maintain a financial management system, which will account for all funds received under this Contract and expenditures made in furtherance of the project. Such system shall be created and maintained in accordance with generally accepted accounting principles. This system shall be documented to the satisfaction of the City and shall include:

- a. A general ledger (balance sheet and statement of revenue and expenses) in which, a summary of all accounting transactions are recorded. In addition, the Contractor shall maintain a cash receipt and disbursement register, in which receipts and disbursements will be documented. Funds disbursed by the Contractor shall be made by pre-numbered checks, used in numerical sequence and must be supported by appropriate documentation. This documentation includes items such as payroll, time and attendance records, invoices, contracts, records of travel payments, and notations showing the approval of an authorized official of the Contractor.
- b. The Contractor shall maintain such records and accounts including property, personnel, and

financial records so as to assure a proper accounting for all project funds. These records shall be retained by the Contractor for a period of three years after the City makes final payments to the Contractor pursuant to this Contract and after all other pending matters are closed. At any time after the Contract termination, however, the Contractor may turn these over to the City for retention after completion and acceptance of required audits.

- c. The Contractor shall provide a full accounting for all funds paid to it by the City under this Contract. More specifically, Contractor's financial management system shall provide records which identify adequately the source and application of funds under this Contract. These records shall contain information pertaining to encumbrances and unencumbered balances, assets, liabilities, outlays, and income.
 - i. Effective control over and accountability for all funds, property and other assets attributed to the Contract. The Contractor shall adequately safeguard all such assets and shall assure that they are used solely for the performance of the Contract.
 - ii. Comparison of actual expenditures with budgeted amounts for those expenditures and comparison of financial information with performance or productivity data, including the production of per participant cost information.
 - iii. Procedures for determining the eligibility and allocation of costs.
- d. The Contractor's financial records shall be audited by a Certified Public Accountant at least annually. The auditor shall be obtained and paid by the Contractor without any City funds. Should there be an exception taken during the audit, the Contractor shall resolve the findings and recommendations within thirty (30) days after completion of the audit.
- e. Contractor shall provide any information which, the Office of Economic and Workforce Development may reasonably request pertaining to the Contractor's financial management under this Contract.

Contractor shall submit the following documents as attachments to justify costs that are invoiced on a monthly basis:

- 1. A list of staff, with percentages of time spent working on the project each month, and amount of salary charged to the project for the month.
- 2. A list of fringe benefits and percentage and/or dollar amount of each.
- 3. A list of project staff's travel reimbursements, indicating mileage reimbursement rate, time period covered, and payroll date reimbursed.
- 4. General ledger detail report of client support service costs.
- 5. General ledger detail reports for all other budget categories that exceed \$1,000.00 in expenses per month.

Contractor shall have available for in-house review, as needed, sufficient additional documentation to justify costs that are funded under the contract.

Section 13. Audits and Inspections. At any time during normal business hours and as often as the City of Durham, DWS, the U.S. Department of Labor or the Comptroller General of the United States (said four entities and agencies are referred to hereafter as "said Entities") may deem necessary, the Contractor shall make available to said Entities or the duly authorized representatives of any of said Entities, all of the Contractor's books, documents, papers, and records pertaining to this contract, whether digital or not. Audits of Workforce Investment Act funded programs must be conducted in accordance with auditing standards set forth in the financial and compliance handbook entitled "Standards for Audit of Governmental Organizations, Program Activities and Functions", issued by the Comptroller General of the United States and circulars A-128 and A-133 issued by the Federal Office of Management and Budget. Contractor shall submit a copy of the Contractor's annual audit report to the Office of Economic and Workforce Development within sixty days of completion of the audit.

Section 14. Property Management. All non-expendable personal property acquired for the project with funds provided in whole or in part under this contract shall:

- a. become property of the City at the time of acquisition,
- b. be marked by the Contractor with City property numbers obtained from City, and
- c. be turned in to the City upon termination of the project or at such time as the City makes a request for such property.

Non-expendable personal property is defined as property which will not be consumed or lose its identity during the contract term, has a value of \$100.00 or more at the time of purchase, and is expected to have a useful life of one year or more. Property records for non-expendable personal property shall be accurately maintained by the Contractor and shall reflect the following:

- a. a description of the property;
- b. acquisition date and costs;
- c. vendor of the property; and
- d. percentage of the cost of the property purchased with funds from this Contract.

An inventory of non-expendable personal property shall be made by the Contractor for each calendar quarter and upon completion will be transmitted to OEWD. A final inventory is to be submitted by the Contractor to the City upon the termination of this Contract.

Non-expendable personal property shall not be purchased by the Contractor from funds from this Contract unless OEWD has given its approval. The Contractor shall insure that adequate safeguards are provided to prevent loss, damage or theft of the property. In the case of all suspected thefts and if there is any possibility of a criminal cause of the loss or damage, the

Contractor shall report the loss, damage, or theft to the Police of the City, unless the possible crime occurred in another jurisdiction, in which case the Contractor shall report it to the law enforcement authorities with jurisdiction and the Contractor shall provide a copy of the investigation report to OEWD.

Real property shall not be purchased by the Contractor with Project funds unless OEWD had first made a specific, written authorization of such purchase. For the purpose of this Contract, real property means land, land improvements and interests in land, structures and appurtenances thereto.

Section. 15. Proof of Contracting Requirements. The Contractor shall furnish to the City within ten days after a subcontract is entered into a copy of any subcontract if it is funded, in whole or in part, with funds provided from this Contract. Such subcontracts shall require subcontractors to comply with all applicable federal, state, and local laws and regulations. The Contractor shall not assign any rights under this Contractor or subcontract any portion of the work without express written approval by the City Manager of the City. Contractor shall not use this Contract or its anticipated proceeds to borrow money.

Section. 16. Procurement. Without limiting the section of this contract titled “Compliance with Law,” (Subsection 18 (f)) it is agreed that the Contractor shall comply with all applicable bid and procurement laws with respect to all transactions to purchase apparatus, supplies, materials, and equipment which the Contractor may enter as a result of this Contract.

Section. 17. Maintenance of Effort. The Contractor further represents that it would have not performed the scope of work in the absence of this contract and that the scope of services is in addition to what the Contractor’s level of funds and services would have been in the absence of this contract.

Section. 18. E-Verify Compliance. The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). The City is relying on this E-Verify Compliance section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

Section. 19. Miscellaneous.

(a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of

any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed, so as to in any way stop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including but not limited to applicable provisions of the following: Contractor shall be in compliance with prohibitions on conflict of interest, political activities, and lobbying provisions in Attachment C, Certification Regarding Lobbying. No compliance review was conducted in accordance with Ordinance to Promote Equal Business Opportunities in City Contracting.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions.

(2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The "Participation Plan" submitted in accordance with that chapter is binding on the Contractor. Section 18-59(f) of that chapter provides, in part, "If the City Manager ermines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(l) Modifications. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager, deputy or assistant City Manager, or the Director of OEWD (if modifications do not increase the contract amount above \$10,000.00) signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) Agency. Nothing in this Contract is intended or shall be interpreted to create a joint venture or partnership between the City and the Contractor or constitute either the agent of the other, or make the City in any way responsible for the losses, debts, duties, obligations, responsibilities or liabilities of the Contractor.

(n) Representations. Without limiting any other warranty under this contract, or any right or remedy available to the City, it is agreed that the Contractor warrants the accuracy of representations made by it prior to the date of this contract in materials submitted to the City with respect to the Project, including but not limited to materials submitted in response to the request for proposals.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers. The individual signing on behalf of the Contractor warrants that he or she has the authority to bind the Contractor to this contract

CITY OF DURHAM

ATTEST:

By: _____

Pre Audit Certificate:

Educational Data Systems, Inc.

By: _____

Title: _____

(Affix corporate seal.)

State of _____ ACKNOWLEDGEMENT OF
EDUCATIONAL DATA SYSTEMS, INC.

County of _____

I, a notary public in and for the aforesaid county and state, certify that
_____ personally appeared before
me this day and stated that he or she is (~~*strike through the inapplicable:*~~) chairperson/ president/
chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer
of Educational Data Systems Inc., a corporation, and that by authority duly given and as the act
of the corporation, he or she signed the foregoing contract or agreement with the City of Durham
and the corporate seal was affixed thereto. This the _____ day of _____,
20____.

My commission expires: _____

Notary Public

ATTACHMENT A

SCOPE OF WORK

Durham Workforce Development Board

Educational Data Systems Incorporated (EDSI)

Background

Contractor shall perform the following services and activities as part of the Workforce Investment Act Dislocated Worker services program with a budget not to exceed \$200,000 (in program dollars) between January 21, 2013 and March 31, 2014:

Educational Data Systems, Inc. will provide services utilizing the Dislocated Worker Contingency Funds for 60-85 dislocated workers who reside in Durham County. Individuals among the 60-85 must be dislocated workers. The funds will be used to provide short-term occupational skills training and Work Experience (WEX) opportunities. EDSI will utilize approved training providers of the Durham Workforce Development Board and partner with local businesses and agencies to provide the work experiences.

Deliverables

The Dislocated Worker Contingency Funds will allow EDSI to hire one staff member to work within the Integrated Service Delivery structure of the State of North Carolina and coordinate the short-term occupational skills trainings, Work Experiences, and placement of these 60-85 dislocated workers:

Performance Outcomes:

- By March 31, 2014, Forty Dislocated Worker participants will have been identified as in need of Short-term occupational training to overcome barriers and placed in Bootcamp and short-term occupational trainings or in Work Experiences.
- Placement will be ongoing with short-term occupational and Work Experience training participants using dislocated worker funds. The goals will be tiered with an expectation to have:
 - 70% of the training participants completing the Work Experience or short-term occupational training placed by April 31, 2014.

Outcome Measurements

Educational Data Systems, Inc. will maintain systems in place to measure program performance

and ensure continuous quality improvement. To measure progress toward career center success indicators EDSI will use the number of dislocated workers identified as in need of short-term occupational skills training, # enrolled in Bootcamp/ short-term occupational skills training/ Work Experience, retention rate of short term occupational skills training/ Work Experience, exited with employment, and the average wage first quarter after exit with employment. The Program Manager will utilize NCWORKS.GOV to schedule services and track the participants' progress.

A monthly report compiled by the Program Manager due to OEWD by the 13th of each month will include the following:

- Number identified as in need of short-term occupational skills training/Work Experience.
- Number enrolled in Bootcamp
- Number enrolled in short-term occupational skills training outside of Bootcamp by training type.
- Number of **North Carolina Institute of Minority Economic Development (NCIMED)** Pilot program students provided Work Experience
- Number of Dislocated Worker Contingency Fund (DWCF) recipients completing training by month and total.
- Number of NCIMED Pilot Program Participants completing the three month Work Experience
- Number DWCF recipients exiting program with employment
- Average wage first, second, and third quarter after exit

Performance Evaluation & Monitoring

- The Program Manager will participate in monthly review meetings with the City of Durham's Adult Program Coordinator. Program performance and progress toward anticipated outcomes are reviewed and analyzed at these meetings and strategies to ensure favorable outcome results are developed and implemented by the Program Manager.
- The Program Manager will participate in weekly Career Center Staff meetings in order to report results and further enhance the achievement of Career Center Success Indicators.
- The Program Manager will compile and analyze Performance Reports on a monthly basis and discuss results in one-on-one weekly meetings with each Case Manager.
- EDSI Program Manager will work in direct collaboration with the OEWD Adult and Dislocated Worker Program Coordinator and the Career Center Manager to provide an ongoing assessment (monthly) of the project/customer flow and the alignment and/or clear delineation of the assigned roles/responsibilities of each EDSI case manager in order to provide an ongoing evaluation of program performance and the ability of the program to meet and/or exceed state negotiated goals.

Outreach and Orientation

The EDSI staff member hired for the Dislocated Worker Contingency Funds Program will work in partnership with Career Center staff to identify and source dislocated workers that would benefit from a short-term occupational skills training or a Work Experience towards the objective of gaining employment. The staff member will work in partnership with the NCIMED Program Manager to identify Pilot Program participants that qualify for the Work Experience (WEX) and as necessary other supportive service to support the success of the Telecommunication and Energy Pilot Program. NCIMED will be subcontracted to serve as employer of record for the Work Experience (WEX) opportunities within the Pilot Program. This includes EDSI and their staff working as a part of the integrated service delivery model to provide services within the Career Center, and provide orientations or information sessions when needed in the community.

Follow Up Services

The EDSI staff member will provide appropriate follow up services to ensure job retention and to ensure that performance measures are met. These follow-up services are completed the first, second and third quarters after exit to ensure that the program meets performance measures established by the Division of Workforce Solutions. The Placement Specialists are responsible for following up with customers after exit. These cases are not exited until the assigned staff is sure that employment is stable and that the customer has made a reasonable adjustment to work.

A wide range of services are provided following placement with the goal of ensuring that the support and planning needed to maintain employment are in place. Utilizing the monthly report staff will track which customers are currently in follow-up stages. During this time staff will be able to reach out to customers via phone, mail and email to verify their employment. The Placement Specialists notifies the customers at time of exit they are being exited. The Placement Specialist makes sure the customers understand the availability of additional employment services over the next year. The staff will provide a “professional development” session for these customers so we are able to reach them in a group setting and allow them to continue to network. An opportunity for a “job upgrade” is greatly enhanced by attending these sessions.

Supportive Services

The program staff will be trained in and maintain professional development opportunities in how to best assess and identify when support services are needed to ensure client success. Prior to using funds for these services, EDSI will assist the client in exploration of personal resources and other community programs and in making plans for addressing ongoing needs. Although in some cases supportive services are necessary in order for customer’s to obtain and retain a job. When necessary, EDSI will provide transportation assistance, emergency childcare, clothing and emergency housing. Supportive services should be used as a tool for work. The need for these items should not interfere with a customer being successfully employed.

Customer Confidentiality

All counseling activities are confidential and the staff consists of trained counselors who adhere to all counseling ethics and must sign a statement to this effect at the time of hire. All records are confidential, and standard federal guidelines for the maintenance of records are maintained.

Outreach Activities to Local Businesses and Agencies

Businesses tend to use services they are familiar with, so it is important that they are introduced to the local One Stop and the benefits available to the job seeker and employer. The EDSI staff member coordinating the Dislocated Worker Contingency Funds program will also continue in partnership with the Career Center to look to our business community as a client and partner; utilizing their input to drive the types of training opportunities we support and the avenues of employment we direct our clients towards.

The Dislocated Worker Contingency Funds Coordinator will promote the Work Experience services and short-term Vocational (market driven) Training as a mutually beneficial vehicle for candidate recruitment and client work experience. The Work Experience (WEX) provides local employers financial incentives for working with WIA customers. The resources of the Work Experience (WEX) will provide the Telecommunications and Energy Pilot Program students with necessary training and exposure, encouraging the employer or other employers to hire the student for full time employment once the training is complete. EDSI will support NCIMED in the development of Work Experience (WEX) opportunities. EDSI will subcontract to NCIMED to serve as the employer of record for the Work Experiences (WEX) within the Telecommunications and Energy Pilot Program. The opportunities will be structured to ensure that they provide the employer and employee with concrete performance objectives. Programs will be designed to meet the specific needs of the individual employer and placements will be monitored by the Placement Specialist until the individual's training is completed.

To accomplish this staff will do the following:

- Ensure staff understands the needs of the business community,
- Invite employer-input to help identify market needs and then drive client services,
- Utilize the NCWORKS.GOV database and track both contacts and outcome,
- Utilize the NCWORKS.GOV database based on skills to assist with employer recruitment,
- Provide marketing and customer service training to the entire staff,
- Partner with Career Center entities as part of the Business Service Team,
- Partner with approved DWDB training providers to provide short-term occupational skills trainings
- Encourage businesses and clients to attend Professional Networking groups to make connections with businesses, HR representatives and other business professionals.

Training Relevant to Current Labor Market

In order to ensure that customers choose employment and training options by which they will become competitive and gain job security in the forefront of local labor market demand, training will only be approved in high demand occupations and when it is felt that the individual has a reasonable opportunity for success in their chosen field. Program staff will work in direct collaboration with OEWD staff and JobLink partners in order to provide an ongoing assessment off the current labor market. All training must be provided by an approved training vendor who is monitored by the Board. In **all** cases, training is contingent upon completing due diligence.

Specifically, program staff will require all customers to research and then provide information about their chosen field. In turn, EDSI will provide the customers with information and feedback regarding their desired training choice. Open dialogue regarding the pros and cons of the proposed training helps to secure commitment and validates the choices made. EDSI staff will provide the customer with information from the DWDB's strategic plan and encourage them to look into training in high growth industries.

Attachment B

Federal Budget PY 2013 – 2014

Agency Name: Educational Data Systems, Inc. (EDSI)

1/21/2014 - 06/30/2014

Program Costs	Line Item Totals	DW Services
Staff Salaries	\$ 43,200.00	\$ 43,200.00
Staff Fringe Benefits	\$ 16,800.00	\$ 16,800.00
Work Experience	\$ 140,000.00	\$ 140,000.00
Subtotal Training/Support Costs	\$ 200,000	\$ 200,000
Total Project Costs	Line Item Totals	DW Services
Total Program Costs	\$ 200,000	\$ 200,000
Total Program Costs	\$ 200,000	\$ 200,000

Attachment C

Certification Regarding Lobbying

Appendix C to Part 93--**Certification Regarding Lobbying Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Date

Attachment D

Drug-Free Workplace Disclaimer

Name of Contractor: _____ Date: _____

Contractor Signature: _____

In accordance with the Drug-Free Workplace Act of 1988, Contractor will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity or work associated with this contract.

Attachment E

FINANCIAL ASSURANCES AND CERTIFICATION

- A. The Program Applicant (hereinafter referred to as the "Contractor") assures that it will fully comply with the requirements of the Workforce Investment Act (Public Law 105-220) and its regulations, the WIA Local Area Plan approved by the DWDB, and the North Carolina Division of Workforce Development.
- B. The Contractor assures that it will administer its services under the WIA in full compliance with safeguards against fraud and abuse as set forth in WIA and the WIA Regulations; that no portion of its WIA service will in any way discriminate against, deny benefits to, deny employment to, or exclude from participation any person on the grounds of race, color, national origin, religion, age, sex, disability, or political affiliation or belief; that it will target employment and training services to those most in need of them.
- C. The Contractor assures that it will administer its services funded under the WIA in accordance with these provisions: (1) a trainee will receive no payments for training activities in which the trainee fails to participate without good cause; (2) on-the-job training participants will be compensated by the employer at the same rate, including periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the higher of the rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938 of the applicable State Minimum Wage Law; and (3) participants employed in activities authorized under the Act must be paid wages which will not be less than the highest of (a) the minimum wage under Section 6(a)(1) of the Fair Labor Standards Act of 1938, (b) the minimum wage under the applicable State Minimum Wage Law, or the prevailing rates of pay for individuals employed in similar occupations by the same employer.
- D. The Contractor assures that it will administer its services under the WIA in full compliance with health and safety standards established under State and Federal law and that conditions of employment and training be appropriate and reasonable in light of such factors as the type of work, geographical area and proficiency of the participant.
- E. The Contractor assures that all staff and participants/enrollees paid from the grant funds and employed in any service will be covered by workers compensation benefits in accordance with State law; that enrollees in WIA work-related training will be provided accident or medical insurance to cover any injury resulting from participation in the program; and that enrollees employed in subsidized jobs will be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.
- F. The Contractor assures that no funds available under the WIA will be used for contributions on behalf of any enrollee to retirement systems or plans; to impair existing conditions for services or collective bargaining agreements; to assist, promote, or deter union organization; and to displace any currently employed worker.
- G. The Contractor assures that no enrollee will be employed or fill a job opening when any other individual is on layoff from the same or substantially equivalent job, or when the employer terminates the employment of any regular employee or otherwise reduces its work force with the intention of filling vacancies so created by hiring participants subsidized under the Act; and no funds may be used to create promotional lines that infringe upon any current promotional opportunities.
- H. The Contractor assures compliance with all federal rules and regulations which prohibit the use of WIA funds to lobby the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. If lobbying has occurred utilizing other than Federal appropriated funds, the Contractor agrees to file a disclosure report if applicable.
- I. The Contractor assures and certifies that it is in compliance with federal rules and regulations, Debarment and Suspension, 29 CFR Part 98 and is not presently debarred, suspended, for debarment, declared ineligible, or involuntarily excluded from participation in this transaction by any Federal

department or agency.

- J. The Contractor assures and certifies that the Contractor has in place an established grievance procedure to be utilized for grievances or complaints about its program and activities from participants/enrollees, sub-grantees, and subcontractors and other interested parties.
- K. The Contractor will comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) which requires fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.
- L. The Contractor will comply with the provisions of the Hatch Act, which limits the political activity of certain State and local government employees and enrollees in federally funded programs.
- M. The Contractor will comply with NC-GS-234, which prohibits public officials and employees from having a personal interest in any contract to which s/he is also a party in an official capacity.
- N. The Contractor assures and certifies that it will comply with restrictions regarding conducting business with businesses on the Environmental Protection Agency's List of Violating Facilities. Contracts and subcontracts in excess of \$100,000, or circumstances where the Division of Workforce Development has determined that orders under an 'indefinite quantity financial agreement' in any year will not exceed \$100,000, or *if* a facility to be used has been the subject of a conviction under the Clean Air Act [42 U.S.C. 1319 (c)] and is listed by the Environmental Protection Agency (PA) or is not otherwise exempt, the Contractor assures that: (1) no facility to be utilized in the performance of the grant has been listed on the EPA List of Violating Facilities; and (2) it will notify the DWDB, prior to award of the receipt of any communication from the Director of Federal Activities, U.S.E.P.A., indicating that a facility to be utilized for a contract is under consideration to be listed on the EPA List of Violating Facilities.
- O. The Contractor will comply with the provisions of nepotism related to federally funded programs.
- P. The Contractor assures and certifies that enrollees will not be employed on the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship.
- Q. The Contractor assures and certifies that it, and all of its subcontractors, will comply with applicable provisions of the following laws as they relate to employment and training procedures:
- The Drug Free Workplace Act
 - The Immigration Reform Act
 - The American's with Disabilities Act
 - The Davis-Bacon Act
 - Child Labor Laws
 - The Fair Labor Standards Act

Certification

This is to certify that all specifications contained in the DWDB's Request for Proposal have been read, understood, and addressed in the proposal; that the required format has been followed; that all of the information contained in this proposal is true and correct that the Contractor organization will comply with all of the above assurances; and that this proposal has been duly authorized by the governing body of the Contractor organization.

CONTRACTOR NAME _____

SIGNATURE _____ DATE _____

